IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Second appeal No.1486 of 2005
with
Civil Application No. 2118 of 2005

Smt. Lalbi Fakir Mohammad ..Appellant

vs.

Pune Cantonment Board ..Respondent

Shri R.S.Apte for appellant.
Shri V.G.Mujumdar for respondent.

CORAM: S.C.DHARMADHIKARI J.
22nd August, 2007

P.C.

1. The facts are set out in detail in the earlier order which was recalled by me on 10th August, 2007. In para 2 of my order dated 10th August, 2007, I had recorded the statement of Shri Apte appearing for the appellant that she is ready and willing to abide by all such directions as are necessary for due consideration of her proposal for regularisation. A request was made by Shri Apte on 10th August, 2007 and reiterated Yesterday that the Cantonment Board should be directed not to act upon the notice of demolition for some reasonable period so as to enable the appellant to apply for regularisation.

2. Thus, after recalling my earlier order and considering

the statement recorded on 10th August, 2007, that I heard Shri Apte for the appellant so also Shri Mujumdar for the Cantonment Board. The orders were reserved and that is how the matter is placed today.

3. This is a case where the lower Appellate Court, while dismissing the suit instituted by the appellant and reversing the decree of the Trial Court, has observed that earlier suit which was filed challenging the demolition notice was withdrawn. Thus, challenge to the notice does not survive any longer. The notice, therefore, must be treated as legal and valid. The second round of litigation arises out of the alleged assurance given by the Cantonment Board for regularising the structure/construction. It appears that the allegation was that the appellant has consumed more FSI than what was entitled to and that is how a portion of the structure is held to be unauthorised. A request for compounding and regularising the same, according to the appellant, was accepted by the Cantonment Board but the proposal in that behalf was turned down by the Higher Authority. In such circumstances, according to the appellant, when the notice was not intended to be acted upon, then, it was incumbent on the higher authorities to have followed the principles of natural justice and afforded hearing to the appellant

before rejecting the proposal for regularisation.

4. I see no merit in the submission in as much as the lower Appellate Court has in paras 11 and 12 set out the extent of construction and deviation from the sanctioned/approved plan including the details of the FSI consumed at site. In para 16 of the judgment of the lower Appellate Court, the contention with regard to the assurance by the Cantonment Board has been taken note of. The oral and documentary evidence has also been perused. Consistent with the oral and documentary evidence, the lower Appellate Court observed that material with regard to the alleged assurance is so vague that it is not possible to believe the same. The appellant has to blame herself for withdrawing the earlier suit. If she has relied upon assurance of some officer of the Cantonment Board that by itself was not enough to conclude that the structure would be regularised. In the very scheme of functioning of the local bodies, the decision making process involves lot of officers and authorities. The proposal for regularisation is routed through such authorities and the decision is taken as part of the duty and functions which are to be performed under the statute. Unless the statute provides that the authorities must hear the affected party at every stage it is not possible to

read into the provisions, any right of hearing.

5. It is not the case of the appellant that before demolition action/order, she was not heard. She has herself given up the challenge to the notice of demolition. Therefore, when the proposal for regularisation has been turned down, she cannot make a grievance that she has not been heard. The very step of moving for regularisation or compounding the irregularity means that the irregularities are admittedly committed. Whether they are irregularities or illegalities is something for the authorities to judge. In the present case taking a over all view of the matter, the lower Appellate Court is of the view that the request for regularisation cannot be accepted.

6. The only request made is that the order of the lower Appellate Court has been delivered on 29th September, 2005 and after the appellant has approached this Court there has been an order of status quo in force which is operative till today.

7. Shri Apte would urge that the appellant be given a last opportunity to approach the Cantonment Board with a request for regularisation of the unauthorised

construction/portion consistent with the documents which are placed on record of the lower Appellate Court and this Court. In my view, the concession prayed for can be granted only if the appellant approaches the Cantonment Board within a period of 15 days from today. If no application is preferred within a period of 15 days from today, the Cantonment Boatrd is at liberty to go ahead and take such action as is permissible in law including with police assistance demolishing the portion/structure. If the application is made within a period stipulated above, the Cantonment Board should take a decision thereon in accordance with law and communicate the same to the appellant within a period of 8 weeks from the date of receipt of the request for regularisation. Needless to state that if the request is received the Cantonment Board not to demolish the structure till it communicates the decision and for a period of two weeks from the date of communication thereof to the appellant.

8. It is made clear that if the decision is adverse to the appellant, the cantonment board shall proceed against the structure in accordance with law. Appeal stands summarily dismissed with no order as to costs.

9. In view of dismissal of the second appeal civil

application does not survives and hence it is dismissed as does not survive.

(S.C.DHARMADHIKARI J.)